

CARR CONSTRUCTION INSULATION,)	AGBCA No. 2004-118-1
)	
Appellant)	
)	
Representing the Appellant:)	
)	
Lee Carr, Owner)	
Carr Construction Insulation)	
Box 662)	
Cowley, Wyoming 82420)	
)	
Representing the Government:)	
)	
Marcus R. Wah, Esquire)	
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Office of the General Counsel)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

March 17, 2004

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion by Administrative Judge VERGILIO.

On December 22, 2003, the Board received a notice of appeal from Carr Construction Insulation of Belle Fourche, South Dakota (contractor), regarding its contract, No. 43-0355-3-0049, with the respondent, the U. S. Department of Agriculture, Forest Service (Government). Under the contract, the contractor was to provide work on the North Country National Scenic Trail # 1001, in the Sheyenne Ranger District, in the Dakota Prairie Grasslands. By letter dated September 25, 2003, the contracting officer issued a notice of termination for default, finding that the contractor had failed to perform the contract within the time required by the contract terms and that the contractor had not provided a written response with factors bearing upon the failure to perform. This appeal ensued. The contractor maintains that there exist excusable causes for the failure to perform, namely performance was economically impracticable given access road limitations, and the Government was aware of the restrictions but failed to disclose the restrictions to potential contractors.

The Board has jurisdiction over this timely-filed appeal pursuant to the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613, as amended (CDA).

Following an initial telephone conference, the Government and contractor engaged in successful settlement discussions. On March 11, 2004, the Board received from the parties a stipulation for dismissal with prejudice and a signed settlement agreement. Pursuant to the agreement, the termination for default shall be converted to a termination for convenience, the contractor shall receive a total of \$8,538.00 to resolve this dispute and all claims related to or arising under the contract, and this matter is fully resolved and settled. Based upon the settlement, the parties request a dismissal with prejudice of this matter.

DECISION

Given the settlement of the dispute and the request of the parties, the Board dismisses with prejudice this appeal.

JOSEPH A. VERGILIO
Administrative Judge

Concurring:

HOWARD A. POLLACK
Administrative Judge

ANNE W. WESTBROOK
Administrative Judge

Issued at Washington, D.C.
March 17, 2004